

# INVESTIGATIVE FILE



---

ARFTMCPH09DEC05653

AGENCY NUMBER

---

Albert D. Bell

COMPLAINANT

United States Army Criminal Investigations Laboratory,  
Fort Gillem, GA

---

ORGANIZATION FILED AGAINST

---

Army

---

COMPONENT FILED AGAINST

**WARNING:** All information contained in this  
Investigative File is protected by the  
Privacy Act of 1974 and must be dealt with accordingly.

**DEPARTMENT OF DEFENSE**  
CIVILIAN PERSONNEL MANAGEMENT SERVICE  
INVESTIGATIONS AND RESOLUTIONS DIVISION

## **REPORT OF INVESTIGATION**

**Agency Number:** ARFTMCPH09DEC05653

**Activity Against:** Department of the Army  
United States Army Criminal  
Investigations Laboratory (USACIL)  
Fort Gillem, Georgia (GA)

**Complainant's Name and Address:** Mr. Albert D. Bell  
986 Stonewall Drive  
Atlanta, GA 30315

**Representative Name and Address:** Mr. Peter C. Lown, P.C.  
112 Chip Place, Suite 100  
Stockbridge, GA 30281-5055

**Date of Initial Contact with EEO Counselor:** January 12, 2010

**Date Complaint Filed:** February 16, 2010

**Date Investigation Requested:** March 1, 2010

**Date Received by IRD:** March 2, 2010

**Dates of Investigation:** May 13, – May 27, 2010

### **Claims:**

The claim under investigation is:

Was the Complainant discriminated against based on race (African-American), Color (Black), and sex (male) when on:

Claim one: On December 10, 2009, the aggrieved was denied the milestone (5%) salary increase upon completion of the academic phase of his training (as he was the highest paid employee in his group he was informed he would not receive any pay increases until the others in his group were in his salary range);

Claim two: On January 29, 2010, the aggrieved was informed by Mr. Rick Tontarski, he was not selected for the position of Firearms and Toolmark Examiner, YA-0301-01/02;

Claim three: The aggrieved was subjected to ongoing harassment since September 2008, and examples are as follows;

Example a: On his first day at USACIL, Mr. Tontarski asked him into his office and began to re-interview the aggrieved and made comments about how he and his wife believe in diversity, how they moved into a diverse community, etc (typically a warning for people of color);

Example b: The aggrieved learned from USACIL attorney, Lisa Kreeger-Norman, of a comment made by Mr. Bill Doyne to Mr. Tontarski saying, "can't believe that Mikko is hiring Coffey's kid and worse yet he's hiring a minority", after which they both laughed;

Example c: The aggrieved is treated differently than his co-worker, Ryan Coffey, son of Latent Print Chief, who is never required to do anything extra (team building projects and other responsibilities), consulted as to if he was ready to deploy where the aggrieved was told to be ready to deploy;

Example d: After a meeting with Mr. Chelko, USACIL Director, during a meeting with COL Rowe and the RBOC FA group (5 White males, 1 White female, and the aggrieved), COL Rowe made comments about "someone" running to Mr. Chelko about racism and favoritism. He went on to describe what he would do if that person was in his military squad and after a week see if they still had something to complain about. He then named the people in the group who would get the 5% pay increase. Later the next day COL Rowe made a half hearted apology;

Example e: Mr. Tontarski arrives late at a meeting and included in his information he talked about complainers and investigations, that he has been through a lot of them, and when all is said and done nothing changes;

Example f: During a conversation with Bill Doyne, he made the comment to the aggrieved that he will warn the complainer once and then he will fire them. The aggrieved later hears Mr. Doyne comments to Mr. Mikko that since the aggrieved is so unhappy and complaining so much he is going to fire him;

Example g: During a conversation with Mr. Doyne he apologized for saying that he would fire the aggrieved but also commented if the aggrieved was interested in going over the FAD side (where the full time position was), he would have to fire him;

Example h: It was assumed by management through innuendo and remarks made that the aggrieved had written an anonymous letter of complaint, which resulted in a 15-6 investigation. The investigation showed there is a serious problem with minority hiring on the technical side of the laboratory; and

Example i: Even though the full time position applied for was announced as a 301 (no degree required) as well as a 1301 (degree required) position, he is

repeatedly told he needs a degree before he will ever be considered (Investigative File [IF] page [p] Pp 74-75).

**Relief Requested:**

Complainant requests the following:

- Intensive cultural awareness training lab wide;
- Extensive cultural diversity training for management at USACIL;
- Complete compensation for being discriminated against and denied the opportunity to have a permanent job; and
- A five percent milestone raise (IF p 15).

**PART I - BACKGROUND**

During the time at issue, Complainant was employed as a Firearms and Toolmark Examiner, YA-0301-02, assigned to the USACIL, Expeditionary Forensics Division, Firearms, Fort Gillem, GA (see p 9 of the transcript (TR) at the enclosure to the IF). Complainant's first line supervisor was Donald Mikko (race {Caucasian}, color {White}, sex {male}), employed as a Chief of the Firearms and Toolmark Branch, YA-3, assigned to the USACIL, Fort Gillem, GA (TR pp 154-155). Complainant's second level supervisor was William Doyne (race {Caucasian}, color {White}, sex {male}), currently employed as a Lab Manager for Joint Expeditionary Forensic Facility (JEFF) 6, Kandahar Airfield, Afghanistan (IF pp 409-410).

Employment statistics provided by the activity show that in the Expeditionary Forensics Division, there were five Firearms employees (4 Caucasian, 1 African-American, sex {4 males, 1 female}, color was not identified) employed during the relevant period (IF p 83 and TR p 12).

The vacant position at issue was announced as a 301 and a 1301 series level and were initiated on two different job announcements. On July 28, 2009, an external recruitment was announced to fill a permanent YA-0301-01/02, Firearms and Toolmark Examiner position at the USACIL, Forensic Analysis Division, Fort Gillem, GA, Vacancy Announcement number SCDV09579423DR, was opened on July 28, 2009, and closed on August 14, 2009 (IF pp 149-154). The management official responsible for selection of the position was Mr. Mikko. Mr. Mikko and Mr. Joseph Parker (race {Caucasian}, color {White}, sex {male}), employed as the Chief of Forensic Document Branch, GS-14, assigned to the USACIL, Fort Gillem, GA (IF p, TR pp 219-220) served as panel members for the vacant position at issue. The Complainant applied for the position. He was rated qualified and referred for consideration, along with 5 other qualified candidates (race, color, or sex were not identified) on the Web Based Referral List SCDV09579423DR on October 6, 2009 (IF pp 177-178). Mr. Jason Flater was ultimately selected for the vacant position at issue and his entry date was still pending (IF p 459, TR pp 68-69).

On July 17, 2009, an external recruitment was announced to fill a permanent YD-1301-01/02, Physical Scientist (Forensic Firearms and Toolmark Exam) position at the

USACIL, Forensic Analysis Division, Fort Gillem, GA, Vacancy Announcement number SCDV09579066D, was opened on July 17, 2009, and closed on August 14, 2009 (IF pp 236-243). The management official responsible for the selection of the position was Mr. Mikko. Mr. Mikko and Mr. Parker served as panel members for the vacant position at issue. The Complainant did not apply for this vacancy announcement. Three candidates (race, color, and sex were not identified), were referred on the Web based Certificate on September 16, 2009. None of the three candidates were selected for the vacant position at issue (IF pp 280-281).

The Investigations and Resolutions Division requested certain documentation and information prior to the investigation. All documents were received (IF pp 444-452). The Complainant, Mr. Mikko, Mr. Parker, Mr. Richard Eugene Tontarski, Junior (Jr.) (race {Caucasian}, color {White}, sex {male}), employed as a 1301, GS-15, Chief of the Forensic Analysis Division for the Army Crime Lab, Fort Gillem, GA; Mr. Larry Chelko (race {Caucasian}, color {White}, sex {male}), employed as a YF-03, 1301, Director of the USACIL, assigned to Fort Gillem, GA; Colonel Martin Rowe (race {Caucasian}, color {White}, sex {male}), employed as a Colonel in the United States Army, Chief of the Expeditionary Forensics Division, Fort Gillem, GA; Ms. Karen Hill (race {African-American}, color {Black}, sex {female}), employed as a GS-0301-13, Human Resources Analyst, assigned to the USACIL, Fort Gillem, GA; Mr. Jerry Miller (race {Caucasian}, color {White}, sex {male}), employed as a YA, 02, 0301, Firearms and Toolmark Examiner, assigned to the USACIL, Fort Gillem, GA; Ms. Lisa Robin Kreeger-Norman (race {Caucasian}, color {White}, sex {female}); employed as a YA-0905-03, Attorney, assigned to USACIL, Fort Gillem, GA; and Mr. Brandon Ty Huskins (race {Caucasian}, color {White}, sex {male}), employed as a YB-02, Firearms Technician Student, assigned to USACIL, Fort Gillem, GA testified during the investigation (TR pp 8-303). Mr. Doyne was not able to participate during the fact-finding conference due to him being deployed. Mr. Doyne was sent a declaration for him to provide detailed responses to questions and to sign the declaration and return to the investigator (IF pp 409-420). On April 23, 2010, Complainant requested that William Gardner, Brandon Huskins and Ron Crumley be interviewed during the investigation (IF p 430). The investigator did interview Mr. Huskins. Mr. Gardner and Mr. Crumley were not interviewed because their testimony would have been duplicate in nature as Mr. Huskins testimony. No other witnesses were identified, named, or interviewed.

## **PART II – DISCUSSION AND ANALYSIS**

### **Complainant's testimony:**

Regarding claim one, Complainant testifies that Mr. Mikko had a meeting with himself and the other training students (Mr. Huskins, Mr. William Cox, Ryan Coffey, and William Gardner), in or around May 2009, and informed them he was putting them all in for a five percent raise for completing the academic phase of their training. Complainant charges that Mr. Mikko informed them, that they may or may not get the raise he actually put them in for, or they may get some of it, he was not sure (TR p 11).

Complainant notes that he started hearing rumors in September 2009, that their raises were adjusted by Mr. Tontarski, whereas Mr. Coffey and Mr. Huskins were going to be the only students who were going to receive the five percent pay raise. Complainant contends that he discussed the five percent pay raises the students were originally put in for and the adjustments made by Mr. Tontarski with Mr. Chelko. Complainant charges that Mr. Chelko informed him that Mr. Tontarski had decided to use a National Security Personnel System (NSPS) rule when people come in at different salary ranges, he is allowed to take some of the lower paid and level their salary off with some of the higher paid people. Complainant notes that Mr. Chelko further informed him that, this was the reason he adjusted the five percent. Complainant charges that from his understanding, Mr. Tontarski was the management official that charged he was not going to get the five percent increase until the rest of the student trainees (Mr. Huskins and Mr. Coffey) were aligned with his salary (TR pp 11-13).

Regarding claim two, Complainant testifies that he was informed by Mr. Tontarski that he did not receive the vacant position at issue because they got whom they wanted for the job (TR p 14).

Complainant charges that Mr. Flater was ultimately selected for the position even though he initially turned down the job offer. Complainant admits that Mr. Flater is a Firearms and Toolmark Examiner and is certified with the Association of Firearms and Toolmark Examiners. Complainant asserts that he should have been selected because of the following:

- His experience in the 301 series with the IBIS machine (bullet and cartridge machine);
- He is close to finishing the training modules;
- He works well with others; and
- He is familiar with the lab (TR p 16).

Complainant charges that prior to the selection of Mr. Flater, he went to speak with Mr. Chelko about the vacant position at issue. Complainant notes that Mr. Chelko explained about the 1301 series versus the 301 series and informed him that he forced Mr. Tontarski to fill the position because Mr. Tontarski never really wanted to fill the vacant position at issue (TR p 17).

Complainant contends that he wished that the vacant position at issue were not announced using the 1301 and 301 series if the lab wanted to go in a different direction by hiring persons with degrees (TR p 18).

Complainant charges that in reference to claim three, he was subjected to ongoing harassment and cites several examples (a through i), to support his contentions (TR pp 20-36).

Complainant charges that in reference to example a, during his first day at the lab, he met with Mr. Tontarski. Complainant maintains that during this meeting Mr. Tontarski began

to re-interview him by asking about his qualifications. Complainant maintains that Mr. Tontarski made the following comments to him during this meeting:

- Diversity is big for him;
- Discussed his community and what his wife believed in;
- Sometimes people in the lab get things twisted in order to see your reaction; and
- If things need to be clarified, come to him for the truth (TR pp 20-21).

Complainant charges that in reference to example b, after his meeting on his first day in the lab with Mr. Tontarski, he informed Mr. Mikko about the conversation he had with Mr. Tontarski. Complainant contends that Mr. Mikko immediately apologized for what was stated by Mr. Tontarski during the meeting. Complainant contends that Mr. Mikko informed him that Mr. Tontarski probably made the statements to him during the meeting because he figured that he had heard the comment that was made during a TDY trip. Complainant asserts that Mr. Mikko told him a story about a TDY trip whereas, Ms. Kreeger-Norman, Mr. Taylor (race, color, position title, and grade level, were not identified); Mr. Doyne, and Mr. Tontarski were in a rent a car. Complainant asserts that Mr. Mikko informs him that Ms. Kreeger-Norman states that she overheard Mr. Doyne tell Mr. Tontarski that “can’t believe Mikko is hiring Coffey’s kid, and worse yet a minority”, and both of them laughed. Complainant notes that Ryan Coffey is the son of the Latent Prints Chief at USACIL (TR pp 21-22).

Regarding example c, Complainant asserts that Mr. Coffey was treated differently because once Mr. Gardner was declared un-deployable because of his sleep apnea; Mr. Doyne gave Mr. Coffey the opportunity to decide if he wanted to deploy, or not deploy. Complainant maintains that he was informed, as part of his job duties was that he had to deploy. Complainant admits that out of their training group (five trainees, including Complainant), Mr. Cox and Mr. Coffey were the first to deploy and are still currently deployed (TR pp 19-20, 24).

Complainant asserts that Mr. Coffey was allowed only to work on the training modules and were not assigned any additional duties. Complainant maintains that he worked on his training modules and was assigned extra lead duties, such as scheduling TDY trips. Complainant admits that he and Mr. Cox were hired as Examiners because of their previous qualifications and that the others in their training group (Mr. Huskins, Mr. Coffey, Mr. Gardner, and Ms. Sweetie) only came in as Technicians because they did not have previous experience (TR pp 18, 23-24).

Complainant maintains that in reference to example d, after he met with Mr. Chelko about the issues he was having at USACIL, Colonel Rowe returned to the facility and had a meeting with the Reach Back Operations training employees (6 Caucasian and Complainant). Complainant charges that during this meeting Colonel Rowe made comments about someone running to Mr. Chelko complaining about racism and favoritism. Complainant maintains that Colonel Rowe also described what he would do if that person who complained was in his military squad, and he identified persons (Mr. Coffey and Mr. Huskins) who would receive the five percent increase. Complainant maintains that these statements made the entire training team ask him what was going on,

because if anything was racial, it had to be him since he was the only African American in the group (TR pp 24-26).

Complainant maintains that the day after the meeting with Colonel Rowe, Mr. Chelko informed him that someone from the outside was coming in to address the concerns in the lab. Complainant notes that he thanked Mr. Chelko for taking his concerns so seriously. Complainant notes that Mr. Chelko asked him about the meeting with Colonel Rowe and he informed Mr. Chelko what was stated in the meeting. Complainant charges that after he informed Mr. Chelko of what was stated in the meeting, Colonel Rowe and Mr. Tontarski had a meeting with him. Complainant maintains that Colonel Rowe apologized to him of how he had spoke in the meeting because he was so used to dealing with military personnel instead of civilians (TR pp 26-27).

In reference to example e, Complainant asserts that Mr. Tontarski was having a conversation with him about the lab under Mr. Chelko's leadership. Complainant maintains that during this conversation Mr. Tontarski made a comment that he has seen many of the complaints before and when it is all said and done, things usually go back to the way they were (TR p 28).

In reference to example f, Complainant contends that the day after the meeting with Colonel Rowe (October/November 2009), Mr. Doyne asked to speak with him outside of the lab's back door. Complainant maintains that Mr. Doyne informed him that whoever is doing on the complaining and whining, must stop it, because he will not tolerate this type of behavior while being deployed. Complainant maintains that Mr. Doyne further stated that if the complaints continue, he will warn the employee once, and then he will fire them and "send their ass home" (TR p 29).

In reference to example g, Complainant contends that Mr. Doyne apologized for making the comment that he would fire him, but he also commented that if he wanted to go over to the FAD side, where the full time position was, he would have to fire him (TR pp 30-31).

In reference to example h, Complainant notes that he believes from Colonel Rowe's and Mr. Doyne's behavior and comments to him, they believed he wrote an anonymous letter that prompted a 15-6 investigation. Complainant emphasizes that he did not write the anonymous letter (TR p 34).

In reference to example i, Complainant charges that he was informed that he would not be strongly considered for the vacant position at issue because he did not possess a degree. Complainant charges that he did not understand why the position was announced under a 1301 (possessed degree) and a 0301 (no degree), if the lab wanted to hire someone with a degree. Complainant maintains that the person selected (Mr. Flater), did possess a degree (TR pp 35-36).



To summarize, Complainant believes that he was not selected for the vacant position at issue and subjected to discriminatory comments and harassment based on his race, color, and sex.

**Management's Response:**

In reference to claim one, **Mr. Tontarski** contends that Mr. Mikko had recommended that all of the trainees receive an increase based on the completion of some portion of their academic training. Mr. Tontarski charges that none of the Firearms Examiners had completed all of their training, even to date. Mr. Tontarski notes that he had concerns with the recommendation because he was trying to find a way to balance the salary of the trainees because they were brought into the positions at different salary levels. Mr. Tontarski stated that the salary ranged for the Examiners from roughly, \$42,000 to \$66,000. Mr. Tontarski asserts that there was never an established requirement for trainees to receive any type of salary increase for finishing a part of their training requirement (TR pp 62-63).

Mr. Tontarski notes that he recommended ultimately that Mr. Coffey and Mr. Huskins be recommended for increases as an attempt to align their salary and skill sets to other trainees that was brought in at the higher end of the salary spectrum. Mr. Tontarski admits that none of the trainees received any increase (TR pp 64-65).

In reference to claim two, Mr. Tontarski asserts that the vacant position at issue was announced in both job series of 1301 and 0301. Mr. Tontarski charges that the position was announced in both job series because the broadest pool of candidates with firearm experience would fall in the 0301 but the 1301 job series would have additional pool of candidates that were degreed and ideally be certified by the Association of Firearms and Toolmark Examiners (TR p 66).

Mr. Tontarski asserts that Mr. Mikko and Mr. Parker served as panel members for the vacant position at issue and ultimately recommended that Mr. Flater be selected as their first choice. Mr. Tontarski maintains that Mr. Bell was also on the recommendation list and believes he was the second choice. Mr. Tontarski asserts that during the selection process, Mr. Mikko did not officially offer the job to Mr. Flater. Mr. Tontarski charges that Mr. Flater accepted the job in January 2010. Mr. Tontarski asserts that Mr. Flater was ranked the best candidate for the job, because he has 10 years experience in doing firearms work; he has experience at the Georgia Bureau of Investigation, he has experience in the laboratory in Texas; and he is certified by the Association of Firearms and Toolmark Examiners (TR pp 69-70).

In reference to claim three, Mr. Tontarski asserts that he does not believe that Complainant was subjected to harassment based on race, color, or sex (TR p 78).

In reference to example a, Mr. Tontarski charges that he tried to meet with every employee when they came on board to introduce himself, and get to know each of the employees. Mr. Tontarski asserts that he usually ask employee's where did they work,

where did they live, and where they were born. Mr. Tontarski maintains that these kinds of questions that he would ask any employee and these were the same type of questions that he asked Complainant when they had their meeting (TR p 72).

In reference to example b, Mr. Tontarski asserts that he has heard about the comment being discussed, but he has no recollection of the comment being made (TR p 73).

In reference to example c, Mr. Tontarski contends that he has no direct knowledge of any daily ongoing interactions with the Reach Back trainees (TR p 73).

In reference to example d, Mr. Tontarski charges that he has no firsthand knowledge of this allegation (TR p 74).

In reference to example e, Mr. Tontarski maintains that he did not make the comments as described in the allegation. Mr. Tontarski asserts that he stated in the meeting that there was a lot of misinformation around the lab and a lot of bad information that was giving out that was not accurate. Mr. Tontarski maintains that he brought up his experience with things that are usually built around poor communication, or people not going to the source and making erroneous assumptions (TR pp 75-76).

In reference to example f, Mr. Tontarski contends that he has no first-hand knowledge of this allegation (TR p 76).

In reference to example g, Mr. Tontarski charges that he has no first-hand knowledge of this allegation (TR p 77).

In reference to example h, Mr. Tontarski charges that he does not believe that Complainant wrote the anonymous letter and has never told anyone that he believed Complainant did (TR p 77).

In reference to example i, Mr. Tontarski charges that he made it very clear in the organization that the expectation is that everyone would be a Scientist because that is the national standard. Mr. Tontarski charges that there have been many studies conducted by the National Academy of Sciences that address this issue. Mr. Tontarski charges that in order to appropriately be considered for a 1301 job series, the candidate has to possess a degree (TR pp 77-78).

In reference to claim one, **Mr. Chelko** contends that he became aware of the five percent being a concern towards the end of the process. Mr. Chelko charges that he was not involved in the recommendation or actually deciding who would receive the increases. Mr. Chelko maintains that he was "directing traffic to try and insure that things got resolved and the results communicated back to the affected employees". Mr. Chelko charges that he does not believe that any of the trainees received an increase (TR pp 98-99).

In reference to claim two, Mr. Chelko contends that he has no first-hand knowledge of the allegation because he was not directly involved in the selection process. Mr. Chelko charges that he was aware that Complainant had concerns about the permanent position and he wanted to ensure that everything was handled properly and that Complainant receives first-hand feedback as to the results (TR p 99).

In reference to claim three, Mr. Chelko charges that he does not believe that Complainant was subjected to harassment or a hostile working environment (TR p 122).

In reference to example a, Mr. Chelko charges that he does not have any first-hand knowledge of the allegation but Complainant did raise concern with him about the meeting with Mr. Tontarski. Mr. Chelko contends that he asked Mr. Tontarski about his meeting with Complainant and his meeting with other personnel. Mr. Chelko charges that Mr. Tontarski informed him that he does not recall any unusual conversations that he had with Complainant and that all his meetings with new employees had the same content to the conversations that took place (TR p 100).

In reference to example b, Mr. Chelko contends that he does not have any first-hand knowledge of the allegation but once the alleged comment was brought to his attention he did look into the matter. Mr. Chelko charges that he tracked down the comment being allegedly made in a rent a car on a TDY trip at Fort Huachuca whereas Mr. Tontarski, Mr. Doyne, Ms Kreeger-Norman, and Mr. Taylor were passengers. Mr. Chelko charges that Mr. Taylor informed him that he did not recall the alleged comment being made in the rent a car. Mr. Chelko charges that Mr. Tontarski did not recall the alleged comment being made. Mr. Chelko contends that Mr. Doyne informed him that he only informed Mr. Tontarski that he had concerns that Mr. Mikko was hiring persons he knew personally and not based on merit. Mr. Chelko contends that Mr. Doyne informed him that he used two examples of Mr. Mikko hiring actions he had concerns with, and that was Mr. Coffey (son of the Latent Print Chief), and Mr. Black (candidate for a position at the facility, {race, color, and sex were not identified}) (TR pp 101-103).

Mr. Chelko contends that Ms. Kreeger-Norman informed him that she partially overheard a conversation with Mr. Doyne and Mr. Tontarski and she believed she heard a racial comment. Mr. Chelko contends that he asked Ms. Kreeger-Norman if she heard the name Coffey's and the formal name Black, as opposed to the alleged racial comment at issue. Mr. Chelko charges that Ms. Kreeger-Norman informed him that it was possible that is what she heard. Mr. Chelko charges that the issue of candidates rising on the merit list that should not be there were part of the 15-6 investigation. Mr. Chelko asserts that he could not determine if the alleged comment was actually made because three of the four personnel state that the comment was not made and the fourth person had some doubts if the comment was actually made in the context it was made out to state (TR pp 104-105).

In reference to example c, Mr. Chelko charges that he has no firsthand knowledge of this allegation. Mr. Chelko charges that Mr. Gardner and Complainant raised concerns to him

about this issue and he immediately spoke with the management chain (Mr. Tontarski and Colonel Rowe) to resolve the issues (TR p 106).

In reference to example d, Mr. Chelko charges that he has no first-hand knowledge of this allegation. Mr. Chelko charges that Complainant did advise him of concerns he had with what was stated at the meeting. Mr. Chelko contends that he spoke with Colonel Rowe and informed him that maybe what he said at the meeting was not well received. Mr. Chelko contends that he "directs traffic to get a resolution" (TR pp 107-108).

In reference to example e, Mr. Chelko charges that he has no first-hand knowledge of this allegation. Mr. Chelko contends that once the issue was raised with him, he directed his senior personnel and human resources representatives to get an answer from the personnel in headquarters. Mr. Chelko charges that once the correct answer was established then to relay the information to the affected personnel (TR p 109).

In reference to example f, Mr. Chelko charges that he has no first-hand knowledge of this allegation. Mr. Chelko asserts that he believes that Mr. Mikko informed him of the alleged incident prior to Complainant. Mr. Chelko maintains that he spoke to Mr. Doyne about the incident. Mr. Chelko maintains that Mr. Doyne informed him that maybe he should not have stated things the way he did but he was upset and disappointed that he potentially may not have Complainant deploy on his team. Mr. Chelko maintains that Mr. Doyne informed him that he was really counting on Complainant to be on his team to deploy and was frustrated to find out that he might not go (TR pp 110-111).

In reference to example g, Mr. Chelko charges that he has no first-hand knowledge of the allegation (TR pp 110-111).

In reference to example h, Mr. Chelko charges that he does not believe that Complainant wrote the anonymous letter because it is not his style and he had always addressed his concerns with him (TR p 112).

In reference to example i, Mr. Chelko contends that the long-term picture of the organization was to establish positions that required scientific degrees in order to raise the bar over time. Mr. Chelko charges that the 0301 job series has always been announced as a "catch-all" type of series for the position to get trained personnel. Mr. Chelko charges that if personnel are going to say they are a forensic scientist, that being a scientist first (possessing a degree) would be useful in the credentials, and this is the reason for announcing the 1301 job series (TR pp 113-114).

In reference to claim one, **Colonel Rowe** charges that, he was informed in August 2009, that Mr. Mikko had recommended a five percent increase for all of the Firearms students. Colonel Rowe contends that Mr. Tontarski reviewed the recommendation and decided to recommend only two (Mr. Coffey and Mr. Huskins) of the Firearms trainees for the increase because of their salaries as compared to the other trainees. Colonel Rowe maintains that the increases were discussed with personnel and command and it was

decided that an increase could not be given because the trainees were brought in under "other contingency operation dollars" (TR pp 133-136).

In reference to claim two, Colonel Rowe charges that the decision to hire a permanent employee was at the sole discretion of Mr. Tontarski and Mr. Mikko (TR p 138).

In reference to claim three, Colonel Rowe contends that he does not believe that Complainant was subjected to harassment or a hostile working environment (TR p 148).

In reference to examples a, and b, Colonel Rowe charges that he has no first-hand knowledge of these allegation (TR pp 139-140).

In reference to example c, Colonel Rowe charges that Complainant and Mr. Gardner were due to be deployed on the first rotation. Colonel Rowe contends that Mr. Gardner was let go due to medical issues that rendered him non-deployable. Colonel Rowe asserts that Mr. Coffey was asked if he would be ready to deploy eight months earlier than what he was originally told. Colonel Rowe charges that the reason this was asked of Mr. Coffey because it was only a 45- day notice to deploy and Mr. Coffey needed to finish his required training during this time and get his personal finances (power of attorney, legal matters) in order. Colonel Rowe asserts that this was not treating Mr. Coffey special in any kind of way but Mr. Coffey had to be allowed to finish his training and allowed time to get his financial matters in order. Colonel Rowe charges that Mr. Mikko was responsible for the day-to-day activities of the trainees and he had no knowledge of trainees being treated differently (TR pp 140-142).

In reference to example d, Colonel Rowe notes that he held a series of meetings because there was a lot of misinformation floating around the facility. Colonel Rowe notes that he informed personnel in the meetings to come to him to address issues in order to open up the lines of communication. Colonel Rowe maintains that he does not recall making comments about racism, favoritism, or the ways he would treat his military squad. Colonel Rowe maintains that someone informed him after the meeting that the employees felt he "chewed their ass and they were upset". Colonel Rowe maintains that he had another meeting not to apologize, but to clarify his message that if there was a problem, call him directly (TR pp 142-144).

In reference to example e, Colonel Rowe charges that he has no knowledge of this allegation (TR p 145).

In reference to example f, Colonel Rowe charges that he was not around when the alleged comment was made and only heard about it after the fact (TR p 145).

In reference to example g, Colonel Rowe charges that he has no knowledge of this allegation (TR p 146).

In reference to example h, Colonel Rowe maintains that he does not know who wrote the anonymous letter (TR p 146).

In reference to example i, Colonel Rowe maintains that from his discussions with Mr. Tontarski about the position, he was not specifically just looking for a person with a degree, but a candidate who was fully trained and qualified and could do the job without extensive training (TR pp 147-148).

In reference to claim one, **Mr. Mikko** charges that he asked Mr. Doyne and Mr. Don Coffey (race, color, sex, were not identified), Chief of Latent Print Branch what kind of increases they had given their trainees. Mr. Mikko charges that Mr. Doyne and Mr. Coffey relayed that in the past they have given their students increases for finishing portions of their training. Mr. Mikko charges around June 2009, he prepared a memorandum requesting a five percent increase for the trainees (Complainant, Mr. Ryan Coffey, Mr. Cox, Mr. Gardner, and Mr. Huskins) for completing the academic portion of their training to Mr. Tontarski. Mr. Mikko charges that around the end of August 2009, Mr. Tontarski informed him that he was only going to request that two of the trainees (Mr. Ryan Coffey and Mr. Huskins) receive a five percent pay increase. Mr. Mikko charges that the increase for the employees were ultimately reviewed by their human resources personnel and the command and it was determined that no one could receive the increase because of the "monies" that they used. Mr. Mikko emphasizes that he did not promise that the increase would be a definite increase, but informed the trainees that he would request they receive one (TR pp 156-161).

In reference to claim two, Mr. Mikko charges that he was informed by Mr. Tontarski on January 29, 2010, that he wanted to have a meeting with Complainant to inform him that he was not selected for the vacant position at issue. Mr. Mikko charges that the meeting only lasted about five minutes, and Mr. Tontarski reiterated on three occasions that the organization had to do a better job of communicating to employees when they do not receive a position they applied for (TR pp 163-164).

Mr. Mikko charges that he had been trying to fill the vacant position at issue for almost two years. Mr. Mikko charges that Mr. Tontarski placed a new system that had selective placement factors on the job announcement. Mr. Mikko contends that he asked Mr. Miller to be a subject matter expert (SME) for the selective placement factors and he could not discuss the information with him only personnel (Ms. Hill). Mr. Mikko charges that Mr. Miller reviewed all of the applications for the vacant position at issue and sent the names he approved to Ms. Hill and the Civilian Personnel Office (CPOC), Mr. Mikko charges that once he received the applicant's name, he assembled a board to review the applications and interview the personnel. Mr. Mikko contends that he asked Mr. Parker to serve on the board. Mr. Mikko charges that he and Mr. Parker conducted interviews in October 2009, of the eight applicants they received. Mr. Mikko charges that he and Mr. Parker rated Mr. Flater as their number one choice. Mr. Mikko charges that he rated Complainant as the number two applicant and Mr. Parker rated Mr. Cole Goater (race, and color, were not identified) as his second choice. Mr. Mikko charges that he asked two of his subordinates Mr. Miller and Ms. Dana Sevigny (race, and color were not identified) to review all of the applicants information and to see how they would rank their choices. Mr. Mikko charges that Mr. Miller and Ms. Sevigny agreed with his

ranking order; therefore; he confronted Mr. Parker with this information. Mr. Mikko charges that he also informed Mr. Parker that they could not bring anyone from the outside until January 1, 2010 (TR pp 165-169).

Mr. Mikko charges that he called Mr. Flater and informed him of the following: "hey look, continuation from our interview we had a few days ago, here is kind of where we stand. And, you know, you're a good candidate and we have a couple of other good candidates, but you mentioned to me during the interview the other day, that you had some problems in showing up, you know, within a reasonable period of time, can you elaborate?" Mr. Mikko charges that Mr. Flater responded by stating that he had a newborn child and his wife had just got a new job. Mr. Mikko asserts that Mr. Flater also informed him that the cost of living was killing them in Texas and he was not going to be able to sell his home. Mr. Mikko charges he replied to Mr. Flater, "look, Jason, having said all of that, what do you think your earliest dates would be? Mr. Mikko charges that Mr. Flater responded January. Mr. Mikko charges that he informed Mr. Flater that they were hopefully trying to find someone who could show up in a reasonable time. Mr. Mikko charges that Mr. Flater responded that he wanted the job but he did not know if he was going to be able to show up by February; therefore, it was not the proper timing and he declined the position (TR pp 166-170).

Mr. Mikko charges that he prepared a memorandum and stated the ranking of candidates and that Mr. Flater had declined the position. Mr. Mikko charges that Mr. Tontarski informed him about one week later that Complainant should have not made the list because he is not certified, he does not possess a degree, and he cannot give the organization anything. Mr. Mikko charges that Mr. Tontarski informed him that he was going to call Mr. Flater himself to discuss the position (TR pp 171-172).

Regarding claim three, Mr. Mikko charges that based on the preponderance of evidence Complainant's race, color, and gender, could have been factors used to subject him to harassment and a hostile work environment (TR p 192).

Regarding example a, Mr. Mikko charges that he was not in the meeting with Complainant and Mr. Tontarski; therefore, he has no first-hand knowledge of the allegation. Mr. Mikko charges that Complainant did inform him concerning what happened when the meeting was finished (TR pp 176-177).

Regarding example b, Mr. Mikko contends that Ms. Kreeger-Norman informed him upon her return from a TDY trip in Fort Huachuca, Arizona that in a rent a car, Mr. Doyne made the following comment to Mr. Tontarski "can you believe Mikko is hiring Coffey's kid, and he's even hiring a minority". Mr. Mikko admits that he was not in the rent a car when the alleged comment was made (TR pp 181-182).

Regarding example c, Mr. Mikko maintains that he has never personally treated Complainant different from Mr. Coffey. Mr. Mikko asserts that if he has ever given Complainant additional duties, it is because he considers him the senior person with more experience. Mr. Mikko asserts that he gave all the trainees the same exercise, reading

assignments, and the same TDYs schools for training. Mr. Mikko asserts that Mr. Doyne and Colonel Rowe had more control over the trainees and the duties they were performing (TR pp 182-183).

Regarding examples d, and e, Mr. Mikko charges that he has no first-hand knowledge of these allegations because he did not attend the meetings (TR pp 184-185).

Regarding example f, Mr. Mikko contends that Mr. Doyne made the following comment to him "I don't want to give you any excuses, but some of my frustration comes out of my anxiety and frustration over Mr. Bell. Mr. Bell is a whiner and he's a complainer, and ever since he's been here it seems like all this controversy is coming from Firearms". Mr. Mikko charges that he informed Mr. Doyne that he was so far from the spectrum and that Complainant was one of his best students; therefore, he could not fire him. Mr. Mikko charges that Mr. Doyne stated, "I can fire him for just cause, he is a temp employee, so I do not need cause" (TR pp 186-188).

Regarding example g, Mr. Mikko charges that he has no first-hand knowledge of this allegation (TR p 189).

Regarding example h, Mr. Mikko asserts that he does not believe that Complainant wrote the anonymous letter that led to the 15-6 investigation (TR p 189).

Regarding example i, Mr. Mikko asserts that he has informed Mr. Chelko and Mr. Tontarski that if they do not want to hire persons without degrees then they should stop advertising the 0301 job series. Mr. Mikko asserts that if there are enough candidates who are applying under the 1301 job series, then the 0301 job series candidates will never be considered. Mr. Mikko asserts that Complainant was the only person hired within the last couple of years that does not possess a degree (TR pp 175-176).

Regarding claim one, **Mr. Doyne** charges that he believes discussions took place between Mr. Tontarski, Ms. Hill, and Mr. Mikko concerning this allegation; therefore, he has no first-hand knowledge of this allegation (IF p 411).

Regarding claim two, Mr. Doyne charges that he has no first-hand knowledge of this allegation (IF p 411).

Regarding claim three, Mr. Doyne charges that the allegations that Complainant has raised concerning harassment, he believes that race, color, or sex had nothing to do with discussions with Complainant (IF p 411).

Regarding example a, Mr. Doyne contends that he has no first-hand knowledge of this allegation (IF p 411).

Regarding example b, Mr. Doyne charges that to the best of his knowledge that statement or any similar statement was ever made (IF p 411).



Regarding example c, Mr. Doyne charges that he has no first-hand knowledge if Mr. Coffey was ever required to do anything extra by any other management official. Mr. Doyne charges that he used Complainant experience, maturity, and responsibility to assist in tasks needed to complete work assignments for his team. Mr. Doyne charges that Complainant, Mr. Tim Schmahl (race, color, and sex were not identified), Latent Prints, and Dr. Brenda Held (race, color, and sex were not identified), DNA branch, were asked to help their teams when connexes needed to be uploaded, equipment moved, equipment set up, areas policed, etc. Mr. Doyne asserts that the responsibilities that were assigned were not outside of Complainant's training mission. Mr. Doyne maintains that Mr. Gardner was originally supposed to deploy and due to medical reasons he was unable to deploy. Mr. Doyne maintains that Mr. Mikko designated Mr. Coffey as Mr. Gardner's replacement. Mr. Doyne maintains that Mr. Coffey had plans with his family to go on a cruise and did cancel the trip in order to deploy (IF pp 411-412).

Regarding example d, Mr. Doyne recalls in a meeting that Colonel Rowe used an example of taking his military squad on a run, because the entire group was always having issues and if the issues were answered, they were not satisfied with the answers. Mr. Doyne asserts that he felt that maybe Colonel Rowe's example might not have been appropriate for the audience he was addressing, but he did not single anyone out by name or innuendo. Mr. Doyne asserts that he did not have first-hand knowledge of any type of apology (IF p 413).

Regarding example e, Mr. Doyne charges that he does not recall any such meeting taking place (IF p 413).

Regarding example f, Mr. Doyne charges that he spoke to Complainant about the strict conditions they would be facing while deployed such as:

- Being under constant scrutiny;
- Working together for 71 hours a week in a confined space;
- Living together in close quarters;
- Being a team player; and
- Being tentative to everyone who is living together (IF pp 413-415).

Mr. Doyne charges that he informed Complainant that he would not tolerate anyone who was detrimental to the team effort and the mission. Mr. Doyne charges that he informed Complainant that all the Examiners were temporary term over hires and that while they were deployed, if he felt that someone was disruptive to the team, that he would talk to them once and the next time send them home and recommend that their services would no longer be required (IF pp 413-415).

Mr. Doyne charges that on December 8, 2009, Complainant was declared non-deployable because of his body mass index while they were going through medical to be cleared to be deployed. Mr. Doyne charges that because of this situation, Complainant was not eligible to attend CRC training for 90 days, which is the required training that an employee takes right before they deploy. Mr. Doyne charges that there is a requirement that employees be deployable, he wanted to keep Complainant and asked a supervisor if

he could be retested. Mr. Doyne charges upon their return to the office, Mr. Mikko started talking about Complainant going over to the FAD side. Mr. Doyne admits that several factors led to him losing his temper and stating that he could help the situation by recommending Complainant's termination. Mr. Doyne stated that the following factors made him lose his temper:

- No one seemed to appreciate the fact, that he did not recommend Complainant for termination because he had failed one of the major requirements of being deployable;
- No one seemed to account for the fact that Complainant had six months to prepare for deployment because he knew he was going to be on the first rotation and Mr. Cox (who had children) had only a six week notice to deploy because of Complainant being unable to deploy;
- No one seemed to account for the fact they were down to five Examiners since Mr. Gardner was unable to deploy and subsequently let go, and they had three rotations for deployment;
- No one seemed to account for the fact that if Complainant left, they would be down to four Examiners with a committed three deployable rotations, this would mean they would have to hire and train two additional examiners; and
- He felt betrayed because he had demonstrated that Complainant was a valuable employee not to be terminated and this was not accounted for by Complainant or others (IF pp 413-415).

In reference to example g, Mr. Doyne asserts that he was not aware that Mr. Mikko had shared their conversation with Complainant until Colonel Rowe informed him. Mr. Doyne asserts that since Complainant knew of his unprofessional comment, he apologized to him for losing his temper and making the unprofessional comment. Mr. Doyne asserts that he also explained to Complainant why he lost his temper and Complainant did not disagree with anything he stated; therefore, he assumed the matter was settled (IF p 415).

In reference to example h, Mr. Doyne asserts that he has never saw the contents of the anonymous letter and did not know who wrote the letter (IF p 415).

In reference to example i, Mr. Doyne asserts that he has no knowledge of this allegation (IF p 416).

**Complainant's rebuttal:**

Complainant re-emphasizes his position that he was ultimately denied a five percent pay increase due his race, sex, color, and his salary being known around the lab that he was the highest paid trainee (TR p 13).

Complainant re-emphasizes his position that he should have been selected for the vacant position at issue because he was familiar with the lab and equipment. Complainant asserts that if the lab did not want to consider candidates that did not have a degree they

should have not announced the position under the 0301 job series, which he was qualified for and referred for the position (TR pp 16-18).

Complainant re-emphasizes his position that he was subjected to harassment based on his race, color, and sex because of the following:

- he was constantly referred to as “the first minority in firearms”;
- being threatened to be terminated;
- not being selected for the vacant position at issue,
- being the brunt behind a racial comment;
- being subjected to racial innuendo’s; and
- being treated differently than his Caucasian counterpart (TR pp 13-37).

**Testimony of other Witnesses:**

**Mr. Parker** charges in reference to claim one, he has no knowledge of this allegation (TR p 221).

Regarding claim two, Mr. Parker was not in the meeting where Complainant was informed that he was not selected for the vacant position at issue. Mr. Parker asserts that he served as a panel member for the vacant position at issue. Mr. Parker charges that he and Mr. Mikko reviewed applications and conducted interviews for the vacant position at issue. Mr. Parker maintains that he does not recall the specific rankings of the candidates but believes that Mr. Flater was ultimately selected for the position (TR pp 222-224).

Regarding claim three, Mr. Parker has no knowledge of this allegation (TR p 229).

Regarding examples a, b, c, d, e, f, g, and h, Mr. Parker asserts that he has no first-hand knowledge of these allegations (TR pp 225-228).

Regarding example i, Mr. Parker asserts that he recalls that there were two different lists provided for his review of the applications and they were the 1301 job series and the 0301 job series (TR p 223).

Regarding claim one, **Ms. Hill** asserts that from her understanding Mr. Mikko initially recommended five (Complainant, Mr. Cox, Mr. Coffey, Mr. Huskins, Mr. Gardner, and Mr. Huskins) out of the six trainees (one had not finished their training) for a five percent increase based on the fact they had completed a portion of their training. Ms. Hill asserts that the request went originally to Mr. Tontarski and Mr. Tontarski responded with a different recommendation of only allowing Mr. Coffey and Mr. Huskins for an increase in “order to level the playing field”. Ms. Hill maintains that she informed Mr. Tontarski that he should not separate which employees should receive the increase since they all had completed the same training. Ms. Hill maintains that command was notified of the situation and they were informed that they could not discriminate on who received the increases. Ms. Hill maintains that to her knowledge, none of the trainees received the five percent increase (TR pp 236-239).

Regarding claim two Ms. Hill contends that she was not in the meeting where Complainant was informed that he did not receive the vacant position at issue. Ms. Hill charges that she was involved in announcing the position, receiving applications for the position, and submitting the applications to their personnel office in Redstone Arsenal, Alabama. Ms. Hill charges that the SME (Mr. Miller) reviewed all of the applications and determined if the candidates met the qualifications for the position. Ms. Hill charges that the personnel office sends the management official the candidates who made the referral list. Ms. Hill asserts that Mr. Mikko kept her and Mr. Tontarski informed throughout the entire selection process. Ms. Hill asserts that Mr. Mikko sent her and Mr. Tontarski a memorandum that indicated their first choice, Mr. Flater had declined the position and their second choice was Complainant. Ms. Hill charges that she heard Mr. Tontarski inform Mr. Chelko that he instructed Mr. Mikko to select their number three choice, Mr. Goater, even though he did not look good on paper. Ms. Hill charges that instead of going with the third choice, they went back to Mr. Flater, and he accepted the vacant position in question. Ms. Hill charges that she had never witnessed in her career, where a ranking of candidates that should have been followed was overturned (TR pp 238-244).

Regarding claim three, Ms. Hill charges that she does believe that Complainant was subjected to harassment based on his race, color, and sex because of the way he was bypassed on the selection list for the vacant position at issue (TR p 253).

Regarding example a, Ms. Hill charges that she was not in the meeting with Complainant or Mr. Tontarski. Ms. Hill charges that Complainant informed her of his meeting with Mr. Tontarski and she is not aware of Mr. Tontarski having meetings with new employees (TR pp 245-246).

Regarding example b, Ms. Hill contends that she has no first-hand knowledge of the allegation but states that Ms. Kreeger-Norman informed her of the alleged racial comment (TR p 246).

Regarding example c, Ms. Hill charges that she has no first-hand knowledge of the allegation (TR p 247).

Regarding example d, Ms. Hill charges that she did not attend the meeting in question but charges that Colonel Rowe and her spoke about the matter. Ms. Hill charges that Colonel Rowe made an inappropriate statement regarding if they were in the military he would make everyone run until they dropped (TR pp 248-249).

Regarding example e, f, and g, Ms. Hill charges that she has no first-hand knowledge of the allegations (TR pp 250-251).

Regarding example h, Ms. Hill charges that she overheard Colonel Rowe state, "this letter has Bell written all over it" (TR p 250).

Regarding example i, Ms. Hill contends that Mr. Chelko wanted everyone to be included therefore, he wanted to announce the position as a 1301 and a 0301 job series (TR p 241).

Regarding claim one, **Mr. Miller** charges that Mr. Mikko requested that the trainees receive a five percent increase for finishing a portion of their training because this same incentive had been used for trainees in the latent print division. Mr. Miller charges that he was not involved in what happened to the request and was informed by Mr. Mikko that the end result was that the trainees did not receive the increase (TR pp 260-261).

Regarding claim two, Mr. Miller contends that he was not in the meeting with Complainant and Mr. Tontarski. Mr. Miller charges that he served as the SME for the vacant position at issue. Mr. Miller charges that he reviewed all of the applications to determine which applicants were qualified for the position. Mr. Miller charges that after he sent the qualified applicants to the personnel office, he was no longer involved in the selection process. Mr. Miller indicated that he reviewed all applications for the 1301 and 0301 job series. Mr. Miller indicated that he did not recommend Complainant as being qualified based on the placement factors in the job announcement. Mr. Miller indicated that one of the selective placement factors required that a candidate be a qualified Firearms Examiner in the previous year and he knew that Complainant was currently a trainee in that area (TR pp 261-263).

Regarding claim three, Mr. Miller charges that he does not know if Complainant was subjected to harassment based on race, color, or sex (TR p 272).

Regarding examples a, b, c, d, and e, Mr. Miller charges that he has no first-hand knowledge of these allegations (TR pp 265-268).

Regarding example f, Mr. Miller charges that Mr. Doyne stated that he was having problems with Complainant and he was going to have to fire him. Mr. Miller charges that he informed Mr. Doyne that he should speak with Complainant because he was very easy to speak with if he was having problems (TR p 268).

Regarding example g, Mr. Miller contends that he does not have first-hand knowledge of this allegation (TR p 269).

Regarding example h, Mr. Miller charges that he does not believe that Complainant wrote the letter and does not know who actually wrote the letter (TR p 269).

Regarding example i, Mr. Miller notes that the position in question and subsequent positions have been advertised using the 1301 and 0301 job series (TR p 270).

In reference to claims one, two, three, example a, c, d, e, f, g, h, and i, **Ms. Kreeger-Norman** charges that she has no first-hand knowledge of these allegations (TR pp 278-287).

In reference to example b, Ms. Kreeger-Norman charges that around May 2008, she was on a TDY trip in a rent a car with Mr. Tontarski, Mr. Doyne, and Mr. Taylor. Ms. Kreeger-Norman charges that she overheard Mr. Doyne make the following comment to Mr. Tontarski "did you know that Mikko hired Coffey's kid." Ms. Kreeger-Norman charges that "I don't remember hearing the and worst yet, but, what I thought was either some or sever or a black". Ms. Kreeger-Norman maintains that she did not discuss the comment with Mr. Taylor, Mr. Doyne, or Mr. Tontarski. Ms. Kreeger-Norman admits that she discussed the comment with Mr. Mikko upon her return from the TDY trip (TR pp 280-282).

Regarding claim one, **Mr. Huskins** charges that to his knowledge all of the trainees were denied a five percent pay increase. Mr. Huskins charges that he learned later from either Colonel Rowe or Mr. Doyne that he and Mr. Coffey were recommended for a raise in order to try to get them on the same pay level of the other trainees (TR pp 292-293).

Regarding claim two, Mr. Huskins charges that he has no first-hand knowledge of the allegation and he did not apply for the vacant position at issue (TR p 293).

Regarding claim three, Mr. Huskins maintains that he believes Complainant was subjected to harassment based on his race, sex, and gender because of him not receiving the vacant position at issue (TR p 302).

Regarding example a, Mr. Huskins contends that he was not in the meeting with Complainant and Mr. Tontarski but Complainant and Mr. Mikko was discussing what took place during the meeting. Mr. Huskins charges that Mr. Tontarski did not meet with him when he was newly hired (TR pp 294-295).

Regarding example b, Mr. Huskins charges that he heard of the comment in question while attending an event at the getaway club. Mr. Huskins has no firsthand knowledge of the allegation (TR pp 296-297).

Regarding example c, Mr. Huskins charges that Mr. Doyne informed him and Mr. Gardner that he was going to have to give Mr. Coffey an opportunity to make up his mind if they wanted to deploy and leave the choice up to him. Mr. Huskins charges that he was informed along with the other trainees that had to be ready to deploy or they would be terminated. Mr. Huskins charges that he and Complainant had to complete tasks such as keeping inventory in the arms rooms and Mr. Coffey did not have to perform those duties (TR pp 297-298).

Regarding example d, Mr. Huskins contends that during the meeting in question, Colonel Rowe was talking about complaints, and if they were in his squad, he would have them out doing "gorilla drills". Mr. Huskins contends the next day, Colonel Rowe had another meeting and attempted to apologize, but to him it was not exactly an apology. (TR pp 299-300).

Regarding example e, Mr. Huskins charges he recalled during a meeting, Mr. Tontarski stating something to affect that "I have dealt with this before and things have a way of going back to normal" (TR p 300).

Regarding examples f, and g, Mr. Huskins charges that he has no first-hand knowledge of these allegations (TR pp 300-301).

Regarding example h, Mr. Huskins charges he believes Complainant could have written the letter because he had expressed concerns of what was happening in the lab (TR p 301).

Regarding example i, Mr. Huskins charges that he did not apply for the vacant position at issue that was announced in the 1301 and 0301 job series (TR p 293).

### **Investigator's Analysis:**

The evidence collected in this case shows that Complainant belongs to the protected group by virtue of his sex (male), race (African-American), and color (Black). Complainant believes that he was subjected to harassment and a hostile working environment because: he was not selected for the vacant position at issue that he was qualified and referred for; he was subjected to racial comments and innuendoes made by Mr. Tontarski; he was the brunt of a racial comment made by Mr. Doyne; he was denied a five percent salary increase; he was threatened to be terminated by Mr. Doyne; he was subjected to inappropriate comments relating to military squads made by Colonel Rowe; and he was treated differently than his Caucasian counterpart, Mr. Ryan Coffey.

Management denied taking Complainant's race, sex, or color into consideration and offered the following neutral responses:

- Mr. Flater was selected for the vacant position at issue because he has 10 years experience in doing firearms work; he has experience at the Georgia Bureau of Investigation, he has experience in the laboratory in Texas; and he is certified by the Association of Firearms and Toolmark Examiners and Complainant did not possess the same level of experience and was not certified;
- The brunt of the racial comment that Complainant alleges he was a part of, could not be verified as being made, because three out of the four persons that allegedly heard the comment deny the comment being made;
- None of the five trainees (4 Caucasian and 1 African American), received the five percent increase;
- The comments made regarding Complainant's separation was made out of frustration because Complainant became not deployable right before he was suppose to deploy on the first rotation;
- Complainant was given certain duties because he was considered one of the most experienced in his group but the duties were within the scope of his job; and
- All of Complainant's concerns relating to the racial comments, inappropriate comments about military squads, being re-interviewed by Mr. Tontarski, being treated differently with extra duties given to him, being denied the five percent

increase, and being a brunt of a racial comment were addressed by Mr. Chelko (Director of the USACIL).

Documentary evidence reveals that Mr. Mikko requested in a memorandum dated June 22, 2009, that each of the trainees (Complainant, Mr. Ryan Coffey, Mr. William Gardner, Mr. Brandon Huskins, and Mr. William Cox) receive a five percent increase because they had completed the academic portion of their training (IF pp 116-126). Testimonial evidence reveals that Mr. Tontarski reviewed Mr. Mikko's request and he recommended ultimately that Mr. Coffey and Mr. Huskins be awarded the five percent increases as an attempt to align their salary and skill sets to other trainees that were brought in at the higher end of the salary spectrum (TR pp 64-65). Documentary evidence revealed that the following trainees were brought in at different salary levels:

- Complainant was hired on September 29, 2008, at the salary \$60,689.00;
- Ryan Coffey was hired on November 24, 2008, at the salary \$44,644.00;
- William Cox was hired on October 27, 2008, at the salary \$46,680.00;
- Brandon Huskins was hired on November 24, 2008, at the salary \$40,807.00; and
- William Gardner was hired on November 24, 2008, at the salary \$56,679.00 (IF pp 127-131).

Testimonial evidence from Mr. Mikko, Mr. Tontarski, Mr. Chelko, Complainant, Colonel Rowe, Mr. Huskins, and Ms. Hill revealed that to their knowledge none of the trainees received the five percent pay increase (TR pp 11-13, 64-65, 98-99, 133-136, 156-161, 236-239, 292-293).

Testimonial evidence from Mr. Tontarski revealed that he denied making racial innuendo's in a meeting he had with Complainant. Testimonial evidence from Mr. Mikko, Mr. Chelko, and Ms. Hill revealed that Complainant told them about the meeting but were not present during the meeting (TR pp 72, 100, 176-177, 245-246).

Testimonial evidence from Ms. Lisa Kreeger Norman revealed that she overheard a comment that Mr. Doyne made to Mr. Tontarski regarding "did you know that Mikko hired Coffey's kid." Ms. Kreeger-Norman could not positively state that she overheard in the exact words, that the last part of comment of "and worse yet, he is hiring a minority". Testimonial evidence from Mr. Chelko revealed that once Complainant brought this concern to his attention, he immediately spoke to all four persons who allegedly heard the comment. Testimonial evidence from Mr. Chelko revealed that Mr. Taylor, Mr. Tontarski, and Mr. Doyne denied the comment being made and Ms. Kreeger Norman could only verify she overheard part of the comment (TR pp 101-105, 280-282).

Testimonial evidence revealed that Mr. Doyne maintains since Mr. Gardner was unable to deploy at that minute due to medical reasons and that Mr. Coffey was designated as Mr. Gardner's replacement. Testimonial evidence shows that Mr. Doyne maintains that Mr. Coffey had plans with his family to go on a cruise and did cancel the trip in order to deploy (IF p 412).



Testimonial evidence revealed from Colonel Rowe, that Mr. Coffey was asked if he would be ready to deploy eight months earlier than what he was originally told. Testimonial evidence from Colonel Rowe revealed the reason this was asked of Mr. Coffey was because it was only a 45- day notice to deploy and Mr. Coffey needed to finish his required training during his time and get his personal finances (power of attorney, legal matters) in order. Testimonial evidence from Colonel Rowe revealed that this action was not treating Mr. Coffey special in any kind of way, but Mr. Coffey had to be allowed to finish his training and allowed time to get his financial matters in order. (TR pp 140-142).

Testimonial evidence from Mr. Huskins revealed he and Complainant performed duties that Mr. Coffey did not perform. Testimonial evidence from Mr. Mikko revealed that if he has ever given Complainant additional duties, it is because he considers him the senior person with more experience. Testimonial evidence from Mr. Mikko reveals that he gave all the trainees the same exercise, reading assignments, and the same TDYs schools for training. Testimonial evidence from Mr. Chelko revealed that Mr. Gardner and Complainant raised concerns regarding Mr. Coffey never was assigned extra duties; therefore, he immediately spoke with management chain (Mr. Tontarski and Colonel Rowe) to resolve the issues (TR pp 106, 182-183, 297-198).

Testimonial evidence from Mr. Huskins revealed that he heard Colonel Rowe in a meeting refers to complaints, and if they were in his squad, he would have them out doing "gorilla drills". Testimonial evidence from Mr. Huskins revealed that the next day, Colonel Rowe had another meeting and attempted to apologize. Testimonial evidence from Colonel Rowe revealed that he held a series of meetings because there was a lot of misinformation floating around the facility. Testimonial evidence from Colonel Rowe revealed that he does not recall making comments about racism, favoritism, or the ways he would treat his military squad. Testimonial evidence from Colonel Rowe revealed that someone informed him after the meeting that the employees felt he "chewed their ass and they were upset". Testimonial evidence Colonel Rowe revealed that he had another meeting not to apologize, but to clarify his message that if there was a problem, call him directly (TR pp 140-144, 299-300).

Testimonial evidence from Mr. Huskins revealed that he attended a meeting in which he heard Mr. Tontarski make comments regarding complaints whereas, he had dealt with them before and usually things go back to normal. Testimonial evidence from Mr. Tontarski revealed that he denied making the comments as described in the allegation. Testimonial evidence from Mr. Tontarski revealed that during the meeting in question, he brought up his experience with things that are usually built around poor communication, or people not going to the source and making erroneous assumptions (TR pp75-76, 300).

Testimonial evidence from Mr. Doyne revealed that he made the comment regarding Complainant being terminated was made in a reactive moment because he was upset that Complainant was not able to deploy. Testimonial evidence from Mr. Doyne revealed that Complainant failed the medical exam regarding his body mass index being too high, which was totally under his control. Testimonial evidence from Mr. Doyne revealed that

one of the conditions of Complainant's employment is to be deployable and since he was not he could have been terminated, but he requested that Complainant maintain his employment (IF pp 413-415).

Testimonial evidence from Mr. Doyne revealed that he was not aware that Mr. Mikko had shared their conversation with Complainant until Colonel Rowe informed him. Testimonial evidence from Mr. Doyne shows that since Complainant knew of his unprofessional comment, he apologized to him for losing his temper and making the unprofessional comment (IF pp 413-415).

Testimonial evidence from Mr. Tontarski, Mr. Mikko, Mr. Doyne, and Mr. Chelko, revealed that they do not believe that Complainant wrote the anonymous letter that ultimately led to the 15-6 investigation (TR pp 77, 112, 189).

Documentary evidence from the Report of Proceedings by Investigating Officer/Board of Officer (15-6 investigation results), dated November 20, 2009, revealed that Section IV-Findings, tab c states, "Mr. Ryan Coffey's colleagues were not and are not currently being improperly treated or illegally discriminated against. But again, there are perceptions that managers are biased for a variety of reasons (specifically race and nepotism) and there is an ongoing promotion issue that has racial undertones. This involves a hiring action for a permanent firearms examiner" (IF p 330).

Additionally, the record suggests that Mr. Chelko addressed all the Complainant's concerns that he addressed with him by speaking with all management officials involved in the Complainant's concerns and trying to find ways to resolve his issues. The aforementioned incidents would not appear materially adverse or offensive to a reasonable employee. Based on these factors, management's reasons for its actions at issue in the complaint appears to be credible, job related, and the preponderance of the evidence of record fails to show their reasons to be unworthy of belief.

Testimonial evidence from Mr. Tontarski revealed that the position was announced in both job series (1301 and 0301) in order to get the broadest pool of candidates with firearm experience, degreed, and certified by the Association of Firearms and Toolmark Examiners (TR p 66).

Documentary evidence from the memorandum prepared by Mr. Mikko, dated October 19, 2009, for the Selection for the YA-301-01/02, Firearms and Toolmark Examiner revealed that Mr. Flater was going to be his first candidate, indicated during his interview that the timing for the position was not good and he would consider re-applying for the position. This memorandum also indicated that Mr. Mikko's number one ranked candidate is Complainant, his second ranked candidate is Mr. Cole Goater, and his third ranked candidate is Mr. Christopher Tanner (color, and race were not identified) (IF p 319).

Testimonial evidence from Mr. Tontarski reveals that Mr. Mikko and Mr. Parker served as panel members for the vacant position at issue and ultimately recommended that Mr. Flater be selected as their first choice. Testimonial evidence from Mr. Tontarski reveals

that Mr. Bell was also on the recommendation list and believes he was the second choice. Testimonial evidence from Mr. Tontarski reveals that during the selection process, he felt that Mr. Mikko did not officially offer the job to Mr. Flater. Testimonial evidence from Mr. Tontarski reveals that once he officially offered Mr. Flater the position, he did accept the job in January 2010 (TR pp 69-70).

Testimonial evidence from Ms. Hill reveals that Mr. Mikko sent her and Mr. Tontarski a memorandum that indicated their first choice for the vacant position was Mr. Flater, but he had declined the position and their second choice was Complainant. Testimonial evidence from Ms. Hill revealed that she heard Mr. Tontarski inform Mr. Chelko that he instructed Mr. Mikko to select their number three choice, Mr. Goater, even though he did not look good on paper. Testimonial evidence from Ms. Hill revealed that instead of going with the third choice (Mr. Goater), they went back to Mr. Flater to reoffer him the position, and he ultimately accepted the job offer. Testimonial evidence from Ms. Hill revealed that she had never witnessed in her career, where a ranking of candidates that should have been followed was overturned (TR pp 238-244).

Based on the totality of the evidence and testimony presented, management has not articulated a legitimate non-discriminatory reason for the action contested. The reason stated that Complainant was not selected for the vacant position at issue because he was not ultimately the first choice does not withstand scrutiny and is not credible. The Complainant became the first choice of the selecting official after the original first choice candidate declined the job. The aforementioned incident would appear materially adverse to a reasonable employee. The Complainant has presented sufficient evidence to show that management's articulated reason for the action at issue is unworthy of belief.



---

Anika L. Anderson  
Investigator